

WHISARD Compliance Action Report

U.S. Department of Labor Employment Standards Administration Wage and Hour Division

Case ID: **1371610** Originating District: **Dallas TX District Office**
Local Filing Number: **2004-167-04517** Investigating District: **Dallas TX District Office**
WHMIS Case Number: Lead Investigator: **ef 7C**
Registration Date: **07/30/2004**
Assignment Date: **09/15/2004**

Employer Information

Trade Name: **Landmark Education**
Address: **4901 Spring Valley Rd**

Dallas, TX 75244

Legal Name: **Landmark Education Inc.**
EIN: **ef 7C**
County: **Dallas**
NAIC Code: **923110**
No. Of Employees: **3**

Investigation Information

Period Investigated From: **02/01/2003**
To: **02/01/2005**

Investigation Type:
Investigation Tool:
Compliance Status: **ef 5**

BNPI:
Reinvestigation:
Recurring Violation:
Future Compliance Agreed:
Involved in AG:

Recommended Action:

BCDS:
CMP:

Litigation: **ef 5**

Civil Action:

Criminal Action:

Submit For Opinion:

RO/NO Review:

Follow Up Investigation: **ef 5**

Other Action:

Denial of Future Certificate:

BW Payment Deadline:

Trailer forms attached:

CL					
Violation / Compliance Status	Violations	BWs Computed	EEs ATP	BWs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					

FLSA					
Violation / Compliance Status	Violations	BWs Computed	EEs ATP	BWs Agreed	CMPs/LDs

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Failure to pay proper overtime / Agree to Comply

215

Failure to keep accurate records / Refuse to Comply

215

FLSA BW Totals:

215

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:

Unduplicated Employees Agreed:

Total Amount Computed:

215

Total Amount Agreed:

215

Conclusions & Recommendations:

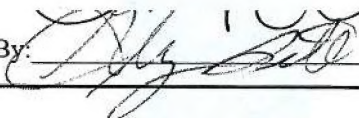
215

2170

WHIS

06/26/2006

Reviewed By:



Date:

7-7-06

Narrative

**Landmark Education, Inc., dba
Landmark Education**
4901 Spring Valley Road
Dallas, TX 75244
972-385-1800

Main Office: Landmark Educations
353 Sacramento Street, Ste 200
San Francisco, CA 94111
(415) 616-2402
EIN: 247C

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History

There is one prior investigation in 1995 for failure to pay minimum wage (Case ID #77851)/Case ID #1378023 done by the MODO that found OT violations for non-exempt salaried employees and backwages were paid.

Coverage

Landmark Education, Inc. dba Landmark Education is an educational program to motivate people in their careers/personal lives. The firm has training centers throughout the United States.

The firm is a corporation that has been in business since 1991/is headquartered at 353 Sacramento Street, Ste 200, San Francisco, CA 94111. The Chairman, is Art Schreiber and CEO, Harry Rosenberg, the secretary and treasurer seats are vacant.

The annual volume of sales for the past two years is as follows:

2003:	244	2004:	244
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Employees regularly use credit card machines/fax machine to conduct daily transactions. The firm meets the requirements of a covered enterprise as defined by the FLSA Section 3(s)(1) and is subject to all its provisions

245

Exemptions:

541.1/2, *et 7C* Site Manager, paid a salary of \$34,000 annually, does meet the duties test *et 5*

541.1/2, *et 7C* Seminar Manager, paid a salary of \$29,900 annually, does not meet the duties test *et 5*

Status of Compliance

The period of investigation was originally 10/24/2002 through 10/24/2004 and was transferred to the MODO/concluded. Reopened by the Dallas District Office 02/01/2003 – 02/01/2005, after the MODO's investigation, which did not address the volunteer issue and the non-exempt salaried employee in Dallas

Section 6: Minimum wage violation found. Volunteers (Assistants) are not paid any wages for hours worked while performing the major duties of the firm. The assistants set up rooms, call registrants, collect fees, keep stats of classroom data/participants, file, they also are answering phones, training and leading seminars

The assistants hours are delegated by an employee of the firm, the work is directed and managed by the site manager, the duties performed are vital to the employer's business. The assistants are not given credit for the hours worked which vary from 10 per week to 60 and up. The assistants are keeping records of attendees, stats on classroom attendance, assisting the instructor with the classes, and also an integral part of the seminars. The employer could not conduct the seminars at the level it has been doing without the enormous amount of assistants (20-40) per seminar. The assistants perform primary functions of the employer such as finance conversations with potential attendees, purchasing, and facility management.

A heavy emphasis is put on volunteering at the initial Landmark Forum attended by newcomers. Attendees are influenced to assist (volunteer) at the classes and told they can gain more knowledge without paying any money to attend seminars that they volunteer at *et 5* By volunteering at these seminars and in the business office the assistants are convinced that they are acquiring skills and knowledge required to improve their social and mental skills that they can use in their full-time employment and personal lives. The assistants displace regular employees that would have to be hired. The employer could not operate with the 2-3 full-time employees per site.

Section 7: An overtime violation resulting from the firm not paying the additional half time to non-exempt salaried employees *et 5*

The firm did agree to comply and pay backwages throughout the United

States via the MODO's investigation *ef 5* but did not include the non-exempt salaried employee in Dallas. The firm has agreed to pay the backwages to the Dallas employee, but will not comply with the overtime violation found for the assistants.

Section 11: A recordkeeping violation resulted from the firm not keeping a record of hours for non-exempt salaried employees, and for assistants that are actually employees *ef 5*

Section 12: No violations.

Complaint Information

The investigation was initiated by *ef 7c* *ef 7c* who alleged employees are not paid overtime correctly/volunteer employees are not paid at all for hours worked. The allegation was substantiated.

Backwages

Computed backwages in the amount of \$6,877 due to the non-exempt salaried employee *7c* that was not included in the MODO's findings (an average of 52 hours per week was used) the employer agreed to pay/comply in the future. No backwages computed for the assistants *ef 5*

ef 5

Disposition

No final conference held. Via MODO instruction case is to be transferred to the District Director of the corporate office.

ef 5

The firm denies that the assistants/volunteers are employees. Interviews reveal that the employees are taking payments, registering clients, billing, training, recruiting, setting up locations, cleaning, and other duties that would have to be performed by staff if the assistants did not perform them *ef 5*
ef 5

A second level was held with Art Schrieber, Landmark, Robert Tollen, attorney, and Glynda Smith, Assistant District Director, November 2005, the parties presented their position to Ms. Smith where the assistants were still held as

employees and the firm did not agree.

ef 5

WHI Fort'e informed Mr. Tollen via phone on June 26, 2006 that the assistants were considered employees and need to be paid MW/OT, that records needed to be kept of the employees/non exempt salaried employees, and that CMP's would be assessed in any future investigations. The firm agreed to pay/comply with the non-exempt salaried employee, but did not agree on the assistants. Mr. Tollen stated he understood the findings. The meeting was adjourned.

Recommendation

ef 5

ef 7c

June 26, 2006